

Remarks

Claims 54-73 and 78-79 are pending in this application. Claims 1-54 have previously been withdrawn. Claims 74-77 have been canceled by this amendment. Claims 78 and 79 are new claims.

Objections:

Claim 68 was objected to for containing an informality. Correction of claim 68 has been made to obviate any informality. Figure 21c discloses an ear piece.

Applicant requests reconsideration of the objection of Applicant's oath. It is submitted that the oath is proper.

Claim Rejections – 35 U.S.C. § 112

Claims 61, 75 and 77 were rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the enablement requirement. Claim 61 has been amended to exchange the word -- quality-- for “integrity”. Reference to “signal quality” is found throughout the specification. No new matter is added by this amendment. Claims 75 and 77 have been canceled.

Claim Rejections – 35 U.S.C. § 102(b)

Claims 55, 56, 58-60, 66-69, 71, 72, 74, and 76 were rejected under 35 U.S.C. § 102(e) as being anticipated by John.

Anticipation can be found only if a reference shows exactly what is claimed. *Titanium Metals Corp. v. Banner*, 778 F.2d 775, 227 USPQ 773 (Fed. Cir. 1985). Anticipation requires identity of the claimed process and a process of the prior art; the claimed process, including each step thereof, must be described or embodied in a single reference. *Glaverbel Societe Anonyme v. Northlake Marketing & Supply, Inc.*, 45 F.3d 1550, 22 USPQ2d 1496 (Fed. Cir. 1995).

John does not anticipate the invention of the present claims as John does not disclose means for calculating at least two indices from each acquired biosignal and selecting an index from said at least two calculated indices to represent the state of consciousness of the living being wherein a first of said at least two indices is derived from a transformation of raw signal data according to a first transformation method and the second and subsequent of said at least two indices is derived from a transformation of raw signal data according to a transformation method different from said first transformation method.

In view of the amendments made herein, reconsideration of this rejection is requested.

Claim Rejections – 35 U.S.C. § 103(b)

Claims 55 and 57 were rejected under 35 U.S.C. § 103(a) as being unpatentable over John in view of Loos.

We respectfully submit that the cited references, separately or in combination, do not disclose or teach the claimed invention. As amended, and as explained above, the claims include limitations found in neither John nor Loos.

Additionally, it is submitted that the combination of John and Loos may be improper for Loos is not directed towards the acquisition and analysis of biosignals for monitoring consciousness. Instead, Loos teaches methods of applying electrical potential to induce potentials in the afferent nerve system which results in relaxation, one sign of which is droopy eyelids (ptosis) which is quite different from measuring spontaneous or induced EEG signals and EMG signals from eyelids as an indicator of consciousness

Claim 61 was rejected under 35 U.S.C. § 103(a) as being unpatentable over John in view of Itil.

We respectfully submit that the cited references, separately or in combination, do not disclose or teach the claimed invention. As amended, and as explained above, the claims include limitations found in neither John nor Itil.

Claims 62 and 70 were rejected under 35 U.S.C. § 103(a) as being unpatentable over John in view of Ennen.

We respectfully submit that the cited references, separately or in combination, do not disclose or teach the claimed invention. As amended, and as explained above, the claims include limitations found in neither John nor Ennen.

Claims 63 and 64 were rejected under 35 U.S.C. § 103(a) as being unpatentable over John in view of Lahteenmaki.

We respectfully submit that the cited references, separately or in combination, do not disclose or teach the claimed invention. As amended, and as explained above, the claims include limitations found in neither John nor Lahteenmaki.

Claim 65 was rejected under 35 U.S.C. § 103(a) as being unpatentable over John in view of Lahteenmaki, as applied to claims 63 and 64, and further in view of Semler.

We respectfully submit that the cited references, separately or in combination, do not disclose or teach the claimed invention. As amended, and as explained above, the claim includes limitations not found in John, Lahteenmaki or Semler.

Claim 73 was rejected under 35 U.S.C. § 103(a) as being unpatentable over John in view of Ennen.

We respectfully submit that the cited references, separately or in combination, do not disclose or teach the claimed invention. As amended, and as explained above, the claims include limitations found in neither John nor Ennen.

Claim 75 was rejected under 35 U.S.C. § 103(a) as being unpatentable over John in view of Ennen, as applied to claim 73, and further in view of Dankward-Eder.

Claim 75 has been canceled.

Claim 76 was rejected under 35 U.S.C. § 103(a) as being unpatentable over John in view of Dankward-Eder.

Claim 76 has been canceled.

Information Disclosure Statement:

By separate cover, Applicant submits PTO/SB/08A including particular reference to reference WO1998/010701. This reference teaches the calculation of an index from EEG outputs, which is a moving average of signal data. However, it does not teach the calculation of two different indices from the data using two different techniques and selecting only one of the indices to be indicative of the state of consciousness.

Conclusion:

Any fees necessitated by this amendment may be charged to the deposit account of the undersigned, Dep. Accnt. #50-1212 (ref. 10408538).

Should the Examiner wish to discuss these claims further, or should an Examiner's Amendment be needed in order for the claims to proceed to allowance, the Examiner is invited to direct any questions regarding this application to John Klos at (612) 321-2806.

Respectfully submitted,
Compumedics Ltd., by its attorneys

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